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In the

Supreme Court of the United States

No. 168

LEON FRIEDMAN,
Petitioner,
vs.
THE UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable Chief Justice of the Supreme Court of the United States:

To the Honorable Associate Justices of the Supreme Court of the United States:

Now comes Leon Friedman and petitions this Honorable Court to issue a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit to review the judgment of that Court entered June 1st, 1951 affirming the conviction and sentence of the petitioner.

Title 28, U. S. C. A., Section 1254.
Supreme Court Rule 38, 28 U. S. C. A.
Rule 37-B of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A.

STATEMENT OF THE CASE

The indictment filed in this case on September 29th, 1950, states as follows:

> "The Grand Jury charges that on or about May 27th, 1950, in the Eastern District of Michigan, Southern Division, Leon Friedman, did wilfully, feloniously, fraudulently and knowingly demand of Frances Shatanoff a sum of money, to-wit: Fourteen Dollars, under threat of informing the *Collector of Internal Revenue* that she had violated the *Internal Revenue Law* in that she had filed a false return, in violation of Section 873, Title 18, U. S. C. A." (R. 1). (Italics supplied.)

The defendant was tried before the Court, having waived a jury, was found guilty and judgment passed December 8th, 1950 (R. 6).

An appeal was taken to the United States Court of Appeals for the Sixth Circuit and on June 1st, 1951 said Appellate Court rendered its judgment as follows:

> "This case came on to be heard upon the records and briefs and oral argument of counsel.
>
> And it appearing that the indictment, although loosely drawn and not to be commended, contains the elements of the offense intended to be charged and fairly apprises the appellant of the charges against him. *Hagner v. U. S.*, 285 U. S. 427, 431, 433;
>
> And it appearing that jury trial was waived and the case was tried to the Court, and that sufficient evidence was presented to support the finding of the

Court that the letter addressed by the appellant to the prosecuting witness constituted a violation of Section 873, Title 18, U. S. C. A.;

It is ordered that the judgment be, and it hereby is, affirmed" (R. 11).

JURISDICTION

This Court has jurisdiction to issue the Writ of Certiorari under Title 28, U. S. C. A. Section 1254. Supreme Court Rule 38, 28 U. S. C. A., and Rule 37-B of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A.

QUESTIONS PRESENTED

1. Does the indictment charge an offense within the purview of Section 873, Title 18, U. S. C. A.?

2. Does the indictment violate the petitioner's constitutional privilege as provided in the Due Process clause of the Fifth Amendment?

3. Does the indictment violate the petitioner's constitutional privilege as provided in the Sixth Amendment, (to be informed of the nature and cause of the accusation)?

REASONS RELIED UPON FOR GRANTING THE WRIT OF CERTIORARI

1. The indictment does not charge an offense within the purview of Section 873, Title 18, U. S. C. A.

One of the essential elements of the offense charged in Section 873, Title 18, U. S. C. A., is the threat of informing or as a consideration for not informing against any violation of *any law of the United States.*

The indictment here refers only to the Collector of Internal Revenue and the violation of the Internal Revenue Law. The Collector of Internal Revenue is not necessarily

an official of the United States of America, and the Internal Revenue Law does not necessarily refer to the United States Revenue Code and/or the United States Revenue Act. The indictment fails to set forth one of the essential elements of the crime, that is, of informing of a violation of any United States Law.

The indictment violates the petitioner's constitutional privilege as provided in the Fifth Amendment (Due Process Clause) and the Sixth Amendment, (to be informed of the nature and cause of the accusation) to the Constitution of the United States.

The allegations in the indictment are not sufficiently definite to fairly apprise the respondent of what he must be prepared to meet in order to give him a fair opportunity to prepare his defense so that the judgment may be a bar to further proceedings against him for the same offense.

As previously stated, the Collector of Internal Revenue could be the Collector of Internal Revenue for any State, and the Internal Revenue Law could be the Internal Revenue Law of any State in the Union, and a threat of informing against a violation of a State law does not come within the purview of Section 873, Title 18, U. S. C. A. The indictment further charges, that she had filed a false return. No specific return is referred to and if it is to be assumed that it is an income tax return, (many returns are required under the United States Internal Revenue Code) then the year the alleged false return was filed would be an essential element of the offense so that any judgment may be a bar to further proceedings against him for the same offense.

Respectfully submitted,

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Respondent

BRIEF IN SUPPORT OF PETITION

JURISDICTION

The jurisdiction of this Court to entertain this petition and to grant the Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit is contained in Title 28, Section 1254, U. S. C. A.; Supreme Court Rule 38, 28 U. S. C. A., and Rule 37-B of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A.

APPELLATE COURT'S OPINION

The opinion of the Appellate Court (R. 11) states:

> "* * * It appearing that the indictment, although loosely drawn and not to be commended, contains the elements of the offense intended to be charged and fairly apprises the appellant of the charges against him."

Citing *Hagner v. U. S.*, 285 U. S. 427, 431, 433.

ARGUMENT

Rule 7-C of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A., following Section 687, provides in part:

> "The indictment or information shall be a plain, concise and definite written statement of the essential elements constituting the offense charged * * *."

In *Hagner v. U. S., supra,* cited by the Appellate Court in its opinion, provides in part as follows:

> "The indictment in the particular complained of is loosely and inartificially drawn and it not to be commended, but upon the record before us, and without deciding that the indictment would not have been open to some form of challenge at an earlier stage of the case, we are of the opinion that after verdict it is not vulnerable to the attack here made upon it * * *."

Rule 12-B(2) of the Federal Rules of Criminal Procedure, Title 18, U. S. C. A., provides in part as follows:

> "* * * Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the Court at any time during the pendency of the proceeding."

The challenge here made by the petitioner is that the indictment does not charge an offense within the purview of Section 873, Title 18, U. S. C. A.

The true test of the sufficiency of an indictment is not whether it could have been more definite and certain, but whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction. *U. S. v. Hagner, supra; Cochran and Sayre v. U. S.*, 157 U. S. 286, 290; *Rosen v. U. S.*, 161 U. S. 29, 34.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 168

LEON FRIEDMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 11) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 1, 1951 (R. 11). The petition for a writ of certiorari was filed on July 2, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the indictment of petitioner for blackmail in threatening to inform the Collector of Internal Revenue that the person threatened had made a false return under the Internal Revenue Law, without specifying any particular statute, was sufficient against attack made for the first time after his conviction.

STATUTE INVOLVED

18 U.S.C. 873 provides as follows:

> Whoever, under a threat of informing, or as a consideration for not informing, against any violation of any law of the United States, demands or receives any money or other valuable thing, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

STATEMENT

In an indictment filed September 29, 1950, in the District Court for the Eastern District of Michigan, Southern Division, it was charged that on or about May 27, 1950, petitioner had fraudulently demanded of one Frances Shatanoff $14.00 "under threat of informing the Collector of Internal Revenue that she had violated the Internal Revenue Law in that she had filed a false return, in violation of Section 873, Title 18, U.S.C." (R. 1). After trial at which a jury was waived (R. 3), the court found petitioner guilty, and imposed sentence of five months' imprisonment and a $1,000 fine (R. 5, 6). At no point before

or during the trial did petitioner object to the sufficiency of the indictment (R. 2-5). On appeal to the Court of Appeals for the Sixth Circuit, petitioner's conviction was affirmed (R. 11).

The petition for a writ of certiorari challenges only the sufficiency of the indictment to state an offense.

ARGUMENT

There is no merit in petitioner's contention (Pet. 7) that the indictment does not charge an offense within the meaning of 18 U.S.C. 873, *supra*, p. 2. Even if the indictment is conceded to be "loosely drawn and not to be commended," as the Court of Appeals states (R. 11), it cannot be seriously contended that petitioner was not fairly apprised of the nature of the charges against him so that he could make an intelligent defense, and thereafter be in a position to plead double jeopardy if subsequent proceedings were instituted against him for the same offense. If petitioner thought he could not ascertain the nature of the charges from the indictment, he could have moved before trial to quash or for a bill of particulars. See Rule 7(f), F. R. Crim. P.;[1] *Lamar* v. *United States,* 241 U.S. 103, 116-117; *Rosen* v. *United States,* 161 U.S. 29, 34. However, he did not do so.

[1] "The court for cause may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires."

He made no attack upon the sufficiency of the indictment until after the court had entered a finding of guilty and sentenced him. Such tardy complaint came too late under the circumstances, petitioner showing no prejudice or violation of any substantial rights. Cf. *Hagner* v. *United States,* 285 U.S. 427, 433; *Dunbar* v. *United States,* 156 U.S. 185, 191-192.

There was no fatal defect in the indictment by reason of its failure to allege the violation by the person blackmailed of a particular federal internal revenue statute (see Pet. 3-4). Cf. *United States* v. *Fero,* 18 Fed. 901, 904 (E.D. Wisc.) in which the court, in construing the blackmail provisions of section 5484 of the Revised Statutes, similar in substance to the present 18 U.S.C. 873, rejected an argument that it was necessary for the indictment to allege the particular statute which the party threatened had violated. See also *Jefford* v. *United States,* 31 F. 2d 908, 909-910 (C.A. 8); *Roberts* v. *United States,* 248 Fed. 873, 877 (C.A. 9), certiorari denied, 247 U.S. 522.

Nor is there anything in the record which suggests that petitioner at the trial understood the indictment as referring to a state Collector and a state Internal Revenue Law, instead of to a federal officer and law (see Pet. 4). The indictment, making no reference even indirectly to state officers or laws, concludes with reference to the Federal statute, 18 U.S.C. 873, which speaks of

violation by the party threatened of "any law of the United States." That the Collector of Internal Revenue and the Internal Revenue Law mentioned were federal, not state, is the clear purport of the indictment. Petitioner does not contend that he was misled to his detriment in any respect whatsoever.

The indictment is not defective for not stating the date of the alleged false return by Mrs. Shatanoff, that being merely a matter of detail and evidence. See *Glasser* v. *United States,* 315 U.S. 60, 67; *United States* v. *Fero, supra,* 18 Fed. at 905. It stated the date and the amount of petitioner's unlawful demand, and contained sufficient allegations to "identify the offense." Cf. *United States* v. *Fero, supra,* 18 Fed. at 904-905. This Court stated the applicable rule in *Hagner* v. *United States, supra,* 285 U.S. 427 at 431:

> The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, "and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offence, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction." *Cochran and Sayre* v. *United States,* 157 U.S. 286, 290; *Rosen* v. *United States,* 161 U.S. 29, 34.

The indictment here satisfied this test.

CONCLUSION

This case involves only application of settled principles of law. There is no conflict in decisions, and it is respectfully submitted that the petition for certiorari should be denied.

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JULY 1951.

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